



Consumer Electronics Association

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November 21, 2008

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 Twelfth St., SW  
Washington, DC 20554

Re: Notice of ex parte presentation in: MB Docket No. 08-82

Dear Ms. Dortch:

On November 20th, 2008, Robert Schwartz, Constantine Cannon LLP, counsel to CEA and the undersigned met with Dr. Jon Peha, Chief Technologist of the Federal Communications Commission. We discussed CEA's opposition to the Motion Picture Association of America's (MPAA) Petition for Expedited Relief and Petition for Waiver of 47 C.F.R. § 76.1903. We also reviewed the attached chart to address conflicting ex parte submissions regarding the number of HDTV units that would be adversely affected by a grant of MPAA's waiver.<sup>1</sup>

Since 1998 and through September 2008, manufacturers shipped nearly 86 million HDTVs to U.S. retailers.<sup>2</sup> Of that total, more than 25 million, or 29 percent, of those HDTVs could display HDTV content only through inputs via the component video, or "component analog" connections. These sets lack any other interface capable of accepting an HDTV signal. Grant of MPAA's waiver would render these 25 million HDTVs permanently incapable of receiving and displaying programming accessed via set-top boxes for which a content owner or distributor invokes Selectable Output Control (SOC).<sup>3</sup> Reducing the total number of HDTVs by 20 percent to account for replaced or inactive units still leaves more than 20 million HDTVs that would no longer function as they did when originally purchased by U.S. consumers.

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<sup>1</sup> See Letter from Jef Pearlman, Counsel to Public Knowledge, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 08-82 (dated Sept. 17, 2008), at 1; and Letter from Maureen A. O'Connell, Senior Vice President, Regulatory and Governmental Affairs, News Corporation to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 08-82 (dated Oct. 3, 2008) at 1, 2.

<sup>2</sup> CEA compiled the data used in the attached chart through its Market Activity Reports and Analysis (MARA) data program and interviews with CEA manufacturer members. The CEA MARA data program tracks factory-to-U.S. dealer shipments of consumer electronics products in more than 30 product categories.

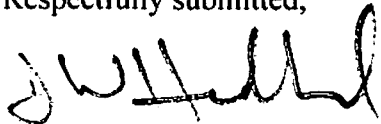
<sup>3</sup> This figure underestimates the adverse impact on consumers because it does not include those units included in the large number of home theatre systems that were installed using only analog connections. These systems would have to be rewired, often at considerable cost to the consumer, to replace the analog connections with HDMI/HDCP or DVI/HDCP connections. Nor does the 25 million figure take into account the large number of HDTVs with an insufficient number of digital interfaces to support multiple HD devices (e.g., monitor, set-top box, DVR). Consumers who purchased these HDTVs may be forced to buy expensive splitters in order to view SOC-triggered content.

The MPAA has not demonstrated why content owners and distributors should be permitted to disable the features and functionality of a consumer's lawfully-purchased HDTV set. Nor has it met the burden of demonstrating why these entities should be entitled to disable more than 20 million HDTV sets long after U.S. consumers have brought them home. Before they are granted this extraordinary power, the MPAA must demonstrate that grant of their request would achieve an important public purpose and that the relief they seek is narrowly tailored.

MPAA's petition fails on both counts. If granted a waiver, petitioners promise vaguely to distribute some unspecified type and amount of programming, somewhat earlier (but how much earlier they refuse to specify) than they are able to do so now. This promise hardly amounts to an important public purpose. They claim that due to the potential but wholly unsubstantiated threat of piracy arising from HDTVs lacking Hollywood-approved inputs, they must be given unfettered control over all inputs on lawfully-purchased HDTV sets. Petitioners request for broad authority over the design and performance of lawful technology and products is the opposite of narrowly tailored.

Given the enormous and highly-specific negative impact that grant of petitioners' waiver would have on U.S. consumers, the lack of a compelling justification for the requested relief, and the steadfast refusal of MPAA to agree to any limitations on the power that it seeks, CEA urges the Commission to deny MPAA's waiver request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Hedlund", written over a horizontal line.

James W. Hedlund  
Vice President, Regulatory Affairs

cc: Dr. John Peha, Chief Technologist

**CEA DTV Shipment History**

Source: MARA program

Note: Unit volumes in 000s

**Analog Connection Analysis**

Year	DTV UNITS	HDTV UNITS	% of HDTV DVI/HDCP	% of HDTV with HDMI	Number of Units with ANALOG-ONLY INPUTS <sup>1</sup>
1998	14	14	0%	0%	14
1999	121	121	0%	0%	121
2000	625	625	5%	0%	594
2001	1,460	1,460	10%	0%	1,314
2002	2,535	2,535	20%	0%	2,028
2003	5,532	4,702	20%	10%	3,292
2004	8,002	6,802	10%	25%	4,421
2005	11,369	9,664	0%	50%	4,832
2006	23,504	19,978	0%	75%	4,995
2007	26,409	22,448	0%	90%	2,245
2008	18,357	17,439	0%	92%	1,395
Total Shipments <sup>2</sup>	<b>97,928</b>	<b>85,788</b>			<b>25,250</b>
HDTVs Currently In Use with Analog-only Connections <sup>3</sup>					<b>20,200</b>
Percentage of HDTVs Currently in Use with Analog-only Connections <sup>3</sup>					<b>24%</b>

<sup>1</sup> Figures based on manufacturer shipment data (CEA MARA data program) and CEA estimates<sup>2</sup> Total shipments through September 2008<sup>3</sup> Assumes that 20% of total units shipped have been replaced or are otherwise no longer being used